IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 25 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME TAX

Versus

AKME ELECTRONICS & CONTROL PVT. LTD.

Appearance:

1. INCOME TAX REFERENCE No. 25 of 1992
MR MANISH R BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA
Date of decision: 12/02/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question of law has been referred for our opinion for the assessment year 1983-84 :-

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that legal expenses incurred by the assessee Company in connection with the amalgamation of the assessee Company with another Company were revenue expenses and allowable as deduction ?"

2. The assessee was a Private Limited Company. During the relevant accounting year, the assessee-Company amalgamated with another Company. The assessee-Company incurred expenditure of amalgamation to the tune of Rs.22,711/-. The assessee pleaded that the said expenditure was allowable as deduction as the said expenditure was revenue expenditure. The Income-tax Officer held that the said expenditure was capital expenditure and did not allow deduction. The assessee filed appeal before the Commissioner of Income-tax (Appeals). The Commissioner of Income-tax (Appeals) allowed the claim of the assessee. The department went in appeal before the Tribunal. The Tribunal relied on the decision of the Madras High Court in CIT vs. Bush Allen (India) Ltd., (1982) 135 ITR 306 and held that legal expenses would be allowable and directed the Income-tax Officer to work out the legal expenses and allow the same. For that purpose, the matter was restored to the Income-tax Officer.

3. We have heard Mrs Mauna M Bhatt, learned standing counsel for the revenue. Though served, none appears for the respondent-assessee.

4. The learned standing counsel for the revenue has submitted that since the expenses in question were incurred for amalgamation of the assessee-Company with another Company, the business of the assessee came to an end and, therefore, it cannot be said that the expenditure was incurred wholly and exclusively for the purpose of the business of the assessee.

5. Our attention is invited to the decision of the Apex Court in CIT vs. Bombay Dyeing & Manufacturing Co. Ltd., (1996) 219 ITR 521, wherein the Apex Court was concerned with the case of the Company which was amalgamated with the assessee i.e. the assessee Company was the transferor Company. In that connection, an expenditure of Rs.10,350 was incurred by the assessee Company towards professional charges paid to a firm of solicitors. In the assessment proceedings, deduction of the said amount was claimed as revenue expenditure. The

Income-tax Officer and the Appellate Assistant Commissioner rejected the claim but the Tribunal allowed it on the ground that as both the Companies were carrying on complementary business and their amalgamation was necessary for the smooth and efficient conduct of the business, it was an expenditure laid out wholly and exclusively for the purpose of the business of the assessee. The Tribunal refused to make a reference and the High Court rejected an application to direct reference. The Apex Court held, dismissing the appeal, that the expenditure incurred towards professional charges of the solicitors' firm for the services rendered in connection with the amalgamation was in the course of carrying on of the assessee's business and, therefore, deductible as a revenue expenditure.

6. As regards the submission of the learned standing counsel for the revenue that the business of the assessee came to an end by its amalgamation with the transferee Company, the principle enunciated by the Apex Court in the above decision would still apply because where two Companies are amalgamated, such amalgamation is resorted to for smooth and efficient conduct of the business of the Company, whether it is transferee Company or transferor Company. Hence, merely because the assessee Company in the instant case was transferor Company, it cannot be said that the expenditure of legal fees was not incurred wholly and exclusively for the purpose of the business of the assessee.

7. It is also necessary to appreciate that when the legal expenses are to be paid in connection with the amalgamation of the assessee Company with another Company, the liability to pay legal expenses arises in respect of the period when the transferor Company still continues to exist. May be on a future date, the transferor Company i.e. the assessee-Company may cease to exist after the scheme is sanctioned by the Court under the relevant provisions of the Companies Act, 1956. The effective date of amalgamation in many cases may even be a date prior to the date of sanction of the scheme, but so long as the scheme is not sanctioned, the transferror Company continues to exist and since the amalgamation is resorted to for the smooth and efficient conduct of the business through the transferee Company, it has to be held that the legal expenses are laid out wholly and exclusively for the purpose of the business of the assessee Company.

8. In view of the above discussion, we are of the view that the Tribunal was right in law in holding that

legal expenses incurred by the assessee-Company in connection with the amalgamation of the assessee-Company with another Company were legal expenses and allowable as deduction.

Accordingly, we answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

The reference accordingly stands disposed of.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

sundar/-